March 19, 2013

ENGROSSED
SENATE BILL No. 586

DIGEST OF SB 586 (Updated March 13, 2013 11:21 am - DI 69)

Citations Affected: IC 13-14; IC 13-18; IC 13-20; IC 13-26; IC 13-30.

Synopsis: IDEM notice procedures. Allows a person to request that the department of environmental management (department) provide notice of an order or a determination issued by the commissioner of the department in an alternate manner that is reasonably available to the department. Makes conforming amendments.

Effective: July 1, 2013.

Charbonneau, Leising, Randolph

(HOUSE SPONSORS — WOLKINS, LEHE)

January 15, 2013, read first time and referred to Committee on Environmental Affairs.
February 4, 2013, amended, reported favorably — Do Pass.
February 7, 2013, read second time, ordered engrossed.
February 8, 2013, engrossed.
February 12, 2013, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Environmental Affairs.
March 18, 2013, reported — Do Pass.

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March 19, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 586

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-14-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) **This section applies to any:**

(1) determination made by the commissioner;

(2) order issued by the commissioner; and

(3) notice issued by the department;

under this title.

(b) The commissioner may issue orders and make determinations. ~~under this title.~~

~~(b)~~ **(c)** An order issued under this section may address multiple sites for the purpose of arranging for site investigations and the establishment of priority of sites.

(d) Notice of a determination made or an order issued by the commissioner must be given under IC 4-21.5-3-1, unless a person provides a written request to the department for a different method of notice that is reasonably available to the department.

(e) The department:

(1) shall make a good faith effort to provide notice of an order or a determination according to subsection (d); and

(2) bears the burden of persuasion that the notice has been provided.

(f) Failure to receive notice does not invalidate an order or a determination, unless the person required to receive notice of an order or a determination is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the person claiming the lack of notice.

SECTION 2. IC 13-14-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. If the designated agent of the department completes the inspection at a time when the property owner is not available to receive an oral report under section 2 of this chapter, the designated agent shall ~~mail~~ **send** a written summary of the inspection ~~by certified mail, return receipt requested,~~ **in accordance with IC 13-14-2-1** to the property owner not later than forty-five (45) calendar days following the inspection.

SECTION 3. IC 13-18-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Whenever the commissioner determines that a person:

(1) is violating; or

(2) is about to violate;

section 5 of this chapter, the department shall serve notice **of the commissioner's determination** on the person ~~by certified mail of the commissioner's determination.~~ **in accordance with IC 13-14-2-1.**

(b) The commissioner shall include in the notice an order against the person to:

(1) cease the violation; and

(2) abate the condition of pollution;

fixing in the order a reasonable time within which the correction and abatement must take place.

(c) Proceedings concerning an order issued under this section are governed by IC 4-21.5.

SECTION 4. IC 13-20-6-4, AS AMENDED BY P.L.154-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) The commissioner may, by order, do the following:

(1) Suspend the waste transfer activities of an operator who is not a resident of Indiana if the operator is not properly licensed, certified, or permitted to conduct waste transfer activities in another state in which the operator does business.

(2) Suspend the waste transfer activities of a transfer station that

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does not meet the requirements of the inspection program established under section 7 of this chapter.

(b) An order issued by the commissioner under this section requiring an operator or transfer station to suspend operations must contain the date by which waste transfer activities must be suspended.

(c) After issuing an order requiring an operator or transfer station to suspend waste transfer activities but before the date by which the activities must be suspended, the department must provide notice ~~by certified mail, return receipt requested,~~ **in accordance with IC 13-14-2-1** to the following:

(1) Each regulated solid waste processing facility in Indiana.

(2) Each regulated solid waste disposal facility in Indiana.

(d) The notice described under subsection (c) must contain the following:

(1) The name of the operator or transfer station subject to the order.

(2) The date on which waste transfer activities are suspended under the order.

(3) If the order applies to a transfer station, the location of the transfer station.

(e) Upon a determination by the commissioner that an operator previously ordered to suspend waste transfer activities may engage again in waste transfer activities, the department shall immediately provide notice ~~by certified mail, return receipt requested,~~ **in accordance with IC 13-14-2-1** to each:

(1) regulated solid waste processing facility in Indiana; and

(2) regulated solid waste disposal facility in Indiana;

that the operator or transfer station will be allowed to resume waste transfer activities. The notice required under this subsection must contain the date on which the operator or transfer station will be allowed to resume waste transfer activities.

SECTION 5. IC 13-20-13-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5.5. (a) A certificate of registration issued by the department under this chapter may be revoked or modified by the commissioner, or by a designated staff member of the department, after notification in writing is sent ~~by certified mail~~ **in accordance with IC 13-14-2-1** to the holder of the certificate for:

(1) failure to disclose all relevant facts;

(2) making a misrepresentation in obtaining the registration; or

(3) failure to correct, within the time established by the department:

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(A) a violation of a condition of the registration; or
(B) a violation of this chapter or a rule adopted by the board under section 11 of this chapter.

(b) A person aggrieved by the revocation or modification of a certificate of registration may appeal the revocation or modification to the office of environmental adjudication under IC 4-21.5-7. Pending the decision resulting from a hearing under IC 4-21.5-3 concerning the revocation or modification, the registration remains in force. However, subsequent to revocation or modification, the commissioner may seek injunctive relief concerning the activity described in the registration.

SECTION 6. IC 13-20-14-5.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5.6. (a) A certificate of registration issued by the department under this chapter may be revoked or modified by the commissioner, or by a designated staff member of the department, after notification in writing is sent ~~by certified mail~~ **in accordance with IC 13-14-2-1** to the holder of the certificate, for:

(1) failure to disclose all relevant facts;
(2) making a misrepresentation in obtaining the registration; or
(3) failure to correct, within the time established by the department, a violation of:
(A) a condition of the registration;
(B) this chapter; or
(C) a rule adopted by the board under section 6 of this chapter.

(b) A person aggrieved by the revocation or modification of a certificate of registration may appeal the revocation or modification to the office of environmental adjudication under IC 4-21.5-7. Pending the decision resulting from a hearing under IC 4-21.5-3 concerning the revocation or modification, the registration remains in force. However, subsequent to revocation or modification, the commissioner may seek injunctive relief concerning the activity described in the registration.

SECTION 7. IC 13-26-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) Except as provided in section 9 of this chapter, the hearing officer shall fix a time and place inside or within ten (10) miles of the proposed district for the hearing on any matter for which a hearing is authorized under this chapter.

(b) The hearing officer shall make a reasonable effort to provide notice of the hearing as follows:

(1) By publication of notice two (2) times each week for two (2) consecutive weeks in at least two (2) newspapers of general circulation in each of the counties, in whole or in part, in the

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district. The publication of notice must, at a minimum, include a legal notice and a prominently displayed three (3) inches by five (5) inches advertisement.

(2) By ~~certified mail, return receipt requested, mailed~~ **United States mail sent** at least two (2) weeks before the hearing to the following:

(A) The fiscal and executive bodies of each county with territory in the proposed district.

(B) The executive of all other eligible entities with territory in the proposed district.

(C) The state and any of its agencies owning, controlling, or leasing land within the proposed district, excluding highways and public thoroughfares owned or controlled by the Indiana department of transportation.

(D) Each sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 respecting territory in the proposed district.

(3) By making a reasonable effort to provide notice of the hearing by regular United States mail, postage prepaid, mailed at least two (2) weeks before the hearing to each freeholder within the proposed district.

(4) By including the date on which the hearing is to be held and a brief description of:

(A) the subject of the petition, including a description of the general boundaries of the area to be included in the proposed district; and

(B) the locations where copies of the petition are available for viewing.

SECTION 8. IC 13-26-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) If the department of natural resources has filed a petition, the commissioner may waive the requirement for notice and hearing provided in section 6 of this chapter.

(b) If the commissioner waives the notice and hearing requirement, the hearing officer shall give written notice ~~by certified mail~~ **in the manner provided** under section ~~6~~ **6(b)(2) or 6(b)(3)** of this chapter. Each recipient of notice has thirty (30) days from the mailing of the notice within which to file objections or material with the hearing officer.

(c) The hearing officer shall then proceed to make findings and recommendations as provided in section 8 of this chapter, based upon any material:

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(1) received by the hearing officer; or
(2) obtained at the hearing officer's discretion through the hearing officer's own investigation.

SECTION 9. IC 13-30-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) The commissioner shall issue written ~~notice, by certified mail with return receipt requested, addressed to the alleged violator at the alleged violator's last known place of residence or place of business;~~ **notice in accordance with IC 13-14-2-1.**

(b) The notice must:
(1) specify the provision of:
(A) the environmental management laws;
(B) the air pollution control laws; or
(C) the water pollution control laws; or
(D) the rule;
allegedly being violated;
(2) include:
(A) a statement of:
(i) the manner in which; and
(ii) the extent to which;
the alleged violation exists; and
(B) an order under sections 10 through 12 of this chapter:
(i) requiring that the alleged violator take specific action to correct the violation;
(ii) assessing a civil penalty under IC 13-30-4-1, IC 13-30-4-2, and section 11 of this chapter for the violation; or
(iii) containing the substance of both item (i) and item (ii); and
(3) include a brief description of the procedure for requesting review under IC 4-21.5.

(c) A copy of the notice and order may also be sent to a local governmental unit that is a party to the action.

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COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 586, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-14-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) **This section applies to any:**

(1) determination made by the commissioner;

(2) order issued by the commissioner; and

(3) notice issued by the department;

under this title.

(b) The commissioner may issue orders and make determinations. ~~under this title.~~

~~(b)~~ **(c)** An order issued under this section may address multiple sites for the purpose of arranging for site investigations and the establishment of priority of sites.

(d) Notice of a determination made or an order issued by the commissioner must be given under IC 4-21.5-3-1, unless a person provides a written request to the department for a different method of notice that is reasonably available to the department.

(e) The department:

(1) shall make a good faith effort to provide notice of an order or a determination according to subsection (d); and

(2) bears the burden of persuasion that the notice has been provided.

(f) Failure to receive notice does not invalidate an order or a determination, unless the person required to receive notice of an order or a determination is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the person claiming the lack of notice.".

Page 1, line 2, delete "(a)".

Page 1, line 6, strike "by".

Page 1, line 7, delete "electronic mail" and insert "**in accordance with IC 13-14-2-1**".

Page 1, delete lines 9 through 11.

Page 2, line 1, strike "by".

Page 2, line 2, delete "electronic mail or United States mail." and insert "**in accordance with IC 13-14-2-1.**".

Page 2, line 27, strike "by".

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Page 2, line 28, delete "electronic mail or United" and insert "**in accordance with IC 13-14-2-1**".
Page 2, line 29, delete "States mail".
Page 3, line 1, strike "by".
Page 3, line 1, delete "electronic" and insert "**in accordance with IC 13-14-2-1**".
Page 3, line 2, delete "mail or United States mail".
Page 3, line 13, strike "by".
Page 3, line 14, delete "electronic mail or United States mail" and insert "**in accordance with IC 13-14-2-1**".
Page 3, line 34, strike "by".
Page 3, line 35, delete "electronic mail or United States mail" and insert "**in accordance with IC 13-14-2-1**".
Page 4, line 23, delete "electronic" and insert "**United States**".
Page 5, line 12, strike "by".
Page 5, line 12, after "mail" delete "the" and insert "**in the**".
Page 5, line 26, delete "notice:" and insert "**notice in accordance with IC 13-14-2-1.**".
Page 5, line 27, delete "(1) by United States mail".
Page 5, line 27, strike "addressed to the alleged violator at the".
Page 5, strike line 28.
Page 5, line 29, strike "business;".
Page 5, line 29, delete "or".
Page 5, delete lines 30 through 31.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 586 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 6, Nays 1.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 586, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

WOLKINS, Chair

Committee Vote: yeas 12, nays 0.

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